IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9244 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMILABEN R DESAI

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI for Petitioner

MR BM MANGUKIYA for Respondent No. 1

MR AD OZA for Respondent No. 3

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. Mr.Oza raised a preliminary objection, re.: maintainability of this writ petition. It is contended that against the order which has been challenged by

petitioner in this special civil application, he has right of appeal before the State Government. This order has been passed by respondent No.3. The learned counsel for the petitioner is in agreement that this order is appealable. When the order impugned in this special civil application is appealable, the petitioner, instead of filing this special civil application, should have approached the appellate authority. It is not the case where remedy of appeal is not adequate and efficacious remedy. No explanation whatsoever has been given out for this direct approach by petitioner to this court against the order which is appealable. The learned counsel for the petitioner submits that the petitioner will file appeal against the impugned order but interim relief which has been granted by this court may be ordered to continue at least for three weeks so that in the meanwhile, he may file appeal and pray for grant of interim relief by the appellate authority. This prayer made by learned counsel for petitioner is not opposed by learned counsel for respondent No.3. In the result, this special civil application is disposed of in the terms that the order against which the special civil application is filed is not maintainable and the petitioner has alternative efficacious remedy available against it. The petitioner is free to file appeal and in case appeal is filed, the appellate authority may not dismiss the same only on the ground of limitation but may decide the same on merits. Interim relief which has been granted by this court earlier shall continue for three weeks. Rule accordingly stands disposed. No order as to costs.

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(sunil)